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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Criminal Appeal No.1012/2001

APPELLANT Sanat Kumar S/o Jagdish Nai, aged about 35 years, R/o Village Champaran, P.S. Gobara – Nawapara, District Raipur (C.G.)

Versus

RESPONDENT State of Chhattisgarh

CRIMINAL APPEAL u/s 374(2) OF THE CODE OF CRIMINAL PROCEDURE

D.B.: HON'BLE SHRI L.C. BHADOO, J, &
HON'BLE SHRI SUNIL KUMAR SINHA, J.

ORAL JUDGMENT
(17.08.2007)

L.C. Bhadoo, J:-

Shri Sanjeev Kumar Agrawal, Advocate appears on behalf of Shri Akhil Agrawal, counsel for the appellant.

Smt. Anju Ahuja, Dy. Govt. Advocate for the State.

Heard.

1. This appeal is directed against the judgment of conviction and order of sentence dated 20.07.2001 passed by the Special Judge (Atrocities) and Additional Sessions Judge, Raipur (C.G.) in Sessions Trial No.367/2000, whereby the learned Special

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Judge (Atrocities) and Addl. Sessions Judge, after holding the accused/appellant guilty for the offence punishable under Section 302 of I.P.C., for committing murder of his son namely Mahesh, sentenced him to undergo imprisonment for life and to pay a fine of Rs.500/-, in default of payment of fine to further undergo R.I. for one month.

2. Case of the Prosecution in brief is that the accused/appellant is father of the deceased -Mahesh, a boy aged about 13 years. On 27.8.2000 at about 11 a.m., Jagdish (PW-4), who is the Kotwar of village – Champaran, lodged a report in the Police Station – Gobra Nawapara against accused-Sanat Kumar to the effect that on 26/8/2000, Sarpanch - Shakunbai (PW-9) called him and said to him that on Sunday it is the last festival, therefore, he should tell about it to every villagers. Therefore, at about 6 a.m. when he was telling about the festival to the villagers, Lila Bai (PW -8) informed him that Sanat has committed murder of his son by beating him. He went to his fellow Kotwar – Sadhuram, informed him about the incident and both of them went to the house of Sanat Kumar. There they saw number of persons including Shambhu Sahu (PW-10) and Rikhiram (PW-2) standing. On enquiry from Sanat Kumar as to how Mahesh has died, he did not reply, he was mum. When Sanat was asked to put off the shirt of Mahesh, he did not put off the shirt. Thereafter, he himself put off the shirt of Mahesh and many injuries were found on his chest, stomach

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

and back, then, he asked Sanat as to whether he has assaulted Mahesh, on which, he replied that he has assaulted him. Receiving this report SHO, Police Station, Gobra Nawapara registered the First Information Report under Ex.P/6 . He left for the scene of occurrence, prepared site plan under Ex.P/7, after giving notics (Ex-P/3) to *Panchas* prepared inquest (Ex.-P/4) on the body of the deceased. Memorandum of the accused/appellant (Ex.P/1) was recorded, in which, he indicated the place where he kept the weapon of offence i.e. a piece of wood. In pursuance of that, he got recovered the wood, which was seized under Ex.P/2. Body of Mahesh was sent for postmortem examination to Primary Health Centre, Rajim under Ex.P/12, where Dr. N.K. Sambarkar (PW-16) conducted the postmortem. He opined that the cause of death was shock on account of injuries all over the body, contusion on left lung and death was homicidal in nature. He prepared postmortem report (Ex.-P/10)

3. After completion of the investigation, charge sheet was filed in the Court of Judicial Magistrate First Class, Raipur, who in turn committed the case to the Sessions Judge, Raipur, from where, the learned Special Judge (Atrocities) and Additional Sessions Judge received the case on transfer for trial.

4. The prosecution in order to establish charge against accused/appellant examined 17 witnesses. The statement of the accused/appellant was recorded under Section 313 of the

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

Code of Criminal Procedure, in which, he denied the material appearing against him in the prosecution evidence and stated that somebody has attacked his son. Ultimately, the accused stated that he is innocent and has been falsely implicated in the crime.

5. The learned Special Judge (Atrocities) and Additional Sessions Judge, after hearing the arguments of learned counsel for the respective parties, convicted and sentenced the accused/appellant as aforementioned.

6. At the very outset, learned counsel for the appellant has not disputed the homicidal death of Mahesh. Moreover, PW-7 – Maheshwari, sister of the deceased and daughter of accused/appellant, aged about 9 years, has categorically stated that her father attacked the deceased with a piece of wood and her grandfather -Jagdish also assaulted him with a piece of wood.

7. The above ocular evidence is corroborated by the medical evidence of Dr. N.K. Sambarkar, who has stated on 28.8.2000 that he was working as an Assistant Surgeon in the Primary Health Centre, Champaran. At that time, he conducted postmortem on the body of Mahesh and he noticed as many as 11 injuries on various parts of the body of the deceased. There was a linear fracture on the right parietal bone of skull, contusion on the right lung and cause of death was shock,

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

excessive internal injuries, multiple contusions on the lungs. The Doctor opined that the death was homicidal in nature.

8. In view of the above ocular and medical evidence, it is established that the death of Mahesh was homicidal in nature.

9. As far as involvement of accused/appellant in crime in question is concerned, PW-7 - Maheshwari, who is the daughter of the accused and sister of the deceased, aged about 9 years, has categorically stated that her brother - Mahesh had stolen paddy weighing 1-2 kg and sold it at a shop. When her father came to know about the same, he called Mahesh from the hotel of Santu and thereafter, her father/accused - Sanat and grandfather - Jagdish, both assaulted him with a piece of wood, as a result of which, Mahesh sustained many injuries. Mahesh's voice was choked, therefore, her father went to call the Doctor, but the Doctor denied coming. In the morning, when the villagers came, his father said that Mahesh has died on account of vomiting and loose motion. In the cross-examination of this witness, the defence has not been able to elicit any circumstance, which discredits the evidence of this child witness. Moreover, PW-2 - Rikhiram Nishad has categorically stated that on the fateful day, Lilabai W/o Sadhuram- Kotwar came to his house and informed him that Sanat has committed murder of his son, therefore, he alongwith Kotwar went to the house of Sanat, where number of persons were standing, accused/appellant was also present

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there. When they went inside the courtyard of the house, body of Mahesh was lying. Father of Sanat said that accused – Sanat has murdered his grand-son. They saw many injuries on the body of Mahesh, clotted blood was also present. Thereafter, he enquired from Sanat about the incident, on which, he disclosed that his son – Mahesh committed theft of paddy, therefore, he scolded and gave beating to him, on account of which, he has died. In the cross-examination of this witness, defence has not been able to bring on record any circumstance, which discredits the evidence of this witness also.

9. As far as truthfulness of extra judicial confession is concerned, the same stands corroborated by the evidence of PW-7-Maheshwari. Even the weapon of offence, which was used in attacking the deceased, was recovered at the instance of accused/appellant. Therefore, in view of the above, the complicity of the accused in attacking and assaulting his son – Mahesh with a piece of wood is established and to that extent, we do not find any illegality or infirmity in the judgment of the trial Court.

10. Learned counsel for the appellant submits that the deceased was the son of accused/appellant. As the deceased committed theft of paddy and prior to that he ran away to Bombay where he stayed for some time and returned back from there one-two days prior to the date of incident, it enraged his father, who on account of bad habits of his son, in order to correct him and

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

teach him a lesson so that Mahesh should not continue with the bad habits, gave beating to him, and there was no intention of the accused/appellant to commit the murder of his own son. Therefore, offence against the accused/appellant does not travel beyond Section 304 Part-II of IPC.

11. On the other hand, learned counsel for the State supported the judgment of the trial Court. She argued that the accused gave beating to Mahesh, tying him with a rope and even thereafter, when the Doctor asked the accused to bring his son for treatment, he did not take the deceased to the Doctor.

12. In order to appreciate the arguments of learned counsel for the respective parties, we have perused the evidence of PW-7 – Maheshwari, who was present in the house at the time of incident. She has categorically stated that his brother left his studies, ran away to Bombay and he returned from there 1-2 days prior to the date of incident. Thereafter, he committed theft of paddy weighing 1-2 kg and sold the same at a shop. When this fact came to the notice of his father – Sanat, he brought Mahesh from the hotel of Santu and thereafter, her father and grandfather gave beating to Mahesh, on this, Mahesh ran away and entered into a room and closed the door. On scrutiny of above evidence of this witness, it reveals that at the first instance Mahesh left his studies and ran away to Bombay. After returning from Bombay, he committed theft of Paddy and sold the same at a shop. When this fact came to the

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knowledge of the accused/appellant, it enraged him and in a heat of passion, he lost his temper on account of bad habits of his son, ~~and~~ He attacked his son with a piece of wood, as a result of which, there was linear fracture on the right parietal bone, lungs sustained contusion, which proved fatal and ultimately, Mahesh died from the above fatal injury. It cannot be inferred that the accused assaulted the deceased with the intention to cause his death. Moreover, not only the accused/appellant, but grand father of the deceased also attacked Mahesh, who has not been made accused in this case. It is not known that out of the two said persons, who caused the fatal injury, which was responsible for the death of Mahesh, but from the above evidence and fact it may certainly be inferred that the manner in which the accused assaulted his son, he had knowledge that he may likely to cause his death. Therefore, the intention part of causing death is missing in this case. Moreover, the Doctor has not opined that the injuries sustained by Mahesh were sufficient in the ordinary course of nature to cause death. In view of the above, the offence against the accused does not travel beyond Section 304 Part-II of IPC.

13. For the foregoing reasons, conviction and sentence imposed upon accused/appellant under Section 302 of IPC cannot be sustained.

14. In the result, the appeal succeeds.

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आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 9	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	15. Accused/appellant is acquitted of the said charge under Section 302 of IPC. Instead thereof, he is convicted under Section 304 Part-II of IPC and sentenced to undergo R.I. for 7 years. It is stated that the appellant is in detention since 29/8/2000 till today, therefore, the accused/appellant shall be entitled for the set off for the above detention period against the sentence imposed upon him. **Sd/-** **L.C.BHADOO** **Judge**	**Sd/-** **Sunil Kumar Sinha** **Judge**

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